

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,
et al.,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO'S
SUPPLEMENT TO AND JOINDER IN THE RESPONSE OF THE PUERTO RICO
FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY TO MOTION TO
COMPEL OF THE AD HOC GROUP OF GENERAL OBLIGATION BONDHOLDERS,
AMBAC ASSURANCE CORPORATION, ASSURED GUARANTY CORP., ASSURED
GUARANTY MUNICIPAL CORP., THE MUTUAL FUND GROUP, AND NATIONAL
PUBLIC FINANCE GUARANTEE CORPORATION, AND REQUEST FOR ENTRY OF
PROTECTIVE ORDER**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are: (i) the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) the Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) the Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) the Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) the Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.

The Commonwealth of Puerto Rico (the “Commonwealth”), as a Title III Debtor, by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Commonwealth’s representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), hereby supplements and joins in the response of the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) (the “AAFAF Response”) to the *Motion to Compel Compliance with February 26, 2018 Order and For Entry of a Protective Order of Ad Hoc Group of General Obligation Bondholders, Ambac Assurance Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., The Mutual Fund Group, and National Public Finance Guarantee Corporation* (“Movants”) ECF No. 2865 (the “Motion”).

JOINDER

As demonstrated in the AAFAF Response, Movants’s application is a thinly-veiled effort to obtain reconsideration of the Court’s February 26, 2018 discovery order regarding the use of Fiscal Plan Development Materials and should be denied. ECF No. 2590 (the “Order”). This Court ruled on February 26 that “Movants have not shown good cause for the immediate use of the information, which would require the disclosure of many documents currently shared amongst the parties pursuant to protective orders and/or non-disclosure agreements.” Order at 11. The Court left the issue of appropriate confidentiality restrictions regarding such material for a future date, holding that “while Movants may attempt to use the Fiscal Plan Development Materials in the Title III or adversary proceedings, Respondents are not prejudiced from objecting to that use on a document by document basis. Such objections may include the necessity of keeping a particular protective order in place.” *Id.* In other words, the Court *denied* Movants’ request to eliminate confidentiality restrictions, subject to Movants’ right to seek to use

the subject material in the future and Respondents' right to oppose such use. The Motion seeks to undue the Order.

Significantly, the day after this Court handed down the Order, Judge Swain issued a ruling in the AMBAC adversary proceeding that corroborates the Oversight Board's prior contention that the fiscal plans cannot be litigated. *See Ambac v. Commonwealth of Puerto Rico, et al.*, No. 17-00159-LTS, Dkt. No. 156 at 12 (D.P.R. Feb. 27, 2018) ("To the extent these claims rest on contentions that the Fiscal Plan violates Section 201(b) specifications . . . this requested relief necessarily implicates review of the Fiscal Plan's certification and therefore the Court lacks subject matter jurisdiction to consider the merits of the claims."). Accordingly, discovery for the purpose of litigating any fiscal plan is completely inappropriate.

Movants completely overlook this fundamental aspect of the Order, insisting that it stripped confidentiality protections from virtually all the materials that have been provided to them, including information provided to Movants in the dataroom and through mediation. *See* Motion, Ex. C, ECF No. 2865-3.² The Court did no such thing, and its carefully considered balancing of the rights of the parties as embodied in the Order cannot be so cavalierly ignored. Movants have not shown good cause to disregard confidentiality and obtain authority to use information however they wish, or provided a compelling reason to grant the relief they seek, let alone prior to a document-by-document review, and their Motion should be denied.

² Though Movants' brief asks the Court to "compel production" of certain Fiscal Plan Development Materials, this is a misnomer: Movants have already been provided with access to *all* these materials. The disputed issue is the level of confidentiality those materials should be afforded.

CONCLUSION

For the reasons stated in the AAFAF Response, and as supplemented herein, the Oversight Board respectfully requests that the Court deny the Motion, and enter the proposed protective order, attached to the AAFAF's Response as Exhibit A.

Dated: April 23, 2018
San Juan, Puerto Rico

/s/ Martin J. Bienenstock

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